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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,037	05/23/2001	Peter A. Gottlieb	18133-099	1832

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EXAMINER

FLEMING, FRITZ M

ART UNIT PAPER NUMBER

2836

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,037

Applicant(s)

GOTTLIEB ET AL.

Examiner

Fritz M. Fleming

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-20-02 has been entered.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the housing processor in each battery pack must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

It is to be noted that the housing is supported at page 5, but that 8a is not shown in Figure 8.

3. The abstract of the disclosure is objected to because it should be updated to reflect the currently pending claims. Correction is required. See MPEP § 608.01(b).
4. The disclosure is objected to because of the following informalities: The continuity information (i.e. parent) needs to be added.

Appropriate correction is required.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 68-72 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,274,950. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims are obvious variations of the patented claims. For instance, claim 68 is a shortened re-packaging of patented claim 39 regarding the "via any intervening battery pack processors". The transferring of command signals is also in patented claim 39, and the data words are in patented claim 40.

7. Claims 65-67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,274,950 in view of McClure. Pending claim 65 has a housing and sets forth the upstream/downstream connections. For example, patented claims 44-47 set forth various ports which correspond to the claimed inputs and outputs. Thus the patented

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terminology has been changed, save the inclusion of the housing. McClure sets forth that it is old and well known in the art to package series connected batteries 11 in a housing 10. This obviously increases portability and maintainability by placing the batteries in an easily handled package/housing. Thus it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the patented claims per the teachings of McClure so as to benefit from a packaged battery pack housing.

8. Claims 50-64 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,274,950 in view of McClure and Masson. The patented claims detail the specifics of the processors and series/daisy chain arranging, albeit in different terms and terminology. The patented claims lack the housings. As discussed above, McClure shows a housing for series connected batteries. Masson shows in Figure 2 a block outline for the UPS processor, which is obviously suggestive of placing such in a housing when viewed in conjunction with Figure 1. Merely replacing the dashed outline with a physical housing is certainly obvious subject matter suggested by the Masson reference when read by those of ordinary skill in the art. Thus it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the patented claims per the teachings of McClure and Masson so as to benefit from a modularized format.

Claim Rejections - 35 USC § 103

1. Claims 50,54-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stich et al. '533 (A) in view of Reich et al. (B) and Simonsen (C) and Masson (D) and McClure (E) and Ozer (F).

A teaches the overall concept of a single battery 47 that is monitored via 61, this information being passed on to the UPS controller 66 which is connected to AC in via the line monitor 53/62 and to the contactor 34 and static switch 35 so as to control the inverter 46 when the AC drops out. Note that the battery is monitored and numerous alarms are generated.

B teaches the desirability to perform in depth analysis of the "at least one battery" in a UPS. The parameters are stored, measured and communicated. Note the use of RS232C. Amongst the parameters measured are battery string voltage, battery shunt current, and temperature. "Events" are flagged and communicated. See for example Table 1 and Table 2 and the use of an LCD display. Note the use of RJ-11 phone connection.

C teaches that standby batteries often come in parallel strings and it is desirable to monitor these batteries for float voltage, time of battery discharges, total accumulated battery discharge power, temperature and recharge current and voltage. Note that Figures 8-10 show outputs. Figure 11 shows a single processor based monitor for parallel strings, but Figure 12 shows plural monitors (i.e. one for each parallel branch) with the teaching that this is more accurate (see column 9). Finally note that column 5 contemplates the use of a phone modem to transmit the instrument data.

D teaches parallel-connected battery strings that are monitored for voltage, current and temperature so as to ensure proper backup operations. As pointed out above, the dashed outlining of the UPS processor 24 is suggestive of a physical housing.

E teaches a battery pack of series connected batteries in a housing, as set forth above.

F teaches that it is well known and within the skill of the art to provide a display 4 on the pack housing 10 to indicate remaining battery life. This is obviously indicative of battery monitoring circuitry inside the pack housing itself.

Thus it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify A per the teachings of B-F for the purpose of more accurate battery string monitoring so as to ensure proper backup operations when the input AC fails, and to benefit from a modularized construction via housings for the appropriate items. Obviously the number of series coupled batteries and the resultant voltage are dictated by the needed voltage, and thus to select the proper number for the needed voltage is obvious subject matter. Obviously the combined teachings set forth the details of the dependent claims, noting especially F with the remaining life indication. Regarding the claim 60 determination of the number of serviceable batteries, such is obvious subject matter based upon the combined teachings setting forth the various monitoring parameters, of which an obvious byproduct is the number of batteries available for service.

Conclusion

Response to Arguments

2. Applicant's arguments with respect to claims 50-72 have been considered but are moot in view of the new ground(s) of rejection. It is to be noted that the response offered very little in substantive discussion of either the references or the outstanding rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz M. Fleming whose telephone number is 703-308-1483. The examiner can normally be reached on M-F 0630-1500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 703-308-3119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1782.



Fritz M. Fleming
Primary Patent Examiner
Art Unit 2836

fmf
January 8, 2003